treme cruelty, for the single act of the wife. *MacDonald* v. *MacDonald* (1909), — Cal. —, 102 Pac. 927.

At common law it was held that divorce will not be granted for mere mental pain "because the court has no scale of sensibilities by which it can gauge the quantum of the injury done and felt." Lord STOWELL in *Evans* v. *Evans,* 1 Hag. Con. 35, 4 Eng. Ec. 310, 311. §94 of Civ. Code abrogates this common law rule but does not expressly state that a single act shall be considered as inflicting grievous suffering. To the effect that a single act is not sufficient ground for divorce:—*Hoshall* v. *Hoshall,* 51 Md. 72, 34 Am. Rep. 298; *Doyle* v. *Doyle,* 26 Mo. 545; *Richards v. Richards,* 37 Pa. St. (1 Wright) 225; *Lloyd* v. *Lloyd,* 2 Woodw. Dec. 481. These decisions are based in part on the ground that the marriage relation is too sacred to be lightly disturbed, and a single act is not such a disturbance as will warrant the conclusion that the parties cannot live together in the matrimonial relation. False charges of conjugal misconduct are a cause for divorce. *Pinkard* v. *Pinkard,* 14 Tex. 356, 65 Am. Dec. 129; *Bahn* v. *Bahn,* 62 Tex. 518, 50 Am. Rep. 539; *Straus* v. *Straus,* 67 Hun 491, 22 N. Y. Supp. 567; *Wagner* v. *Wagner,* 36 Minn. 239, 30 N. W. 766. The main case seems to reach the limit of the court's discretion in granting a divorce for extreme cruelty.

DOWER—RIGHT TO DOWER—DIVORCE—INTERLOCUTORY DECREE.—Plaintiff and Robt. Bryon were married, and he died intestate Feb. 20, 1908, having obtained an interlocutory decree of divorce made and entered against the plaintiff Dec. 26, 1907, upon which a final judgment was entered April 8, 1908. New York Code of Civ. Pro. §763, provides that if either party to an action dies after an interlocutory judgment but before final judgment is entered, the court will enter final judgment in the names of the original parties, unless the judgment has been set aside. Real Property Law (Laws 1896, p. 584, c. 547) § 176 provides that in case of a divorce dissolving the marriage for the misconduct of the wife she shall not be endowed. Code Civ. Pro. §1774, provides that no final judgment divorcing the parties and dissolving the marriage shall be entered until after three months from the filing of the decision of the court, but on and after the entry of the interlocutory decree the payment of alimony, if allowed, shall cease and the person against whom the judgment is rendered shall have no lien upon the property of the party succeeding in the action. In this action by the widow for dower, *Held,* that the decree granted to the husband before his death did not bar the wife of dower in real estate of which he died seized. *Bryon* v. *Bryon et al.* (1909), 119 N. Y. Supp. 41.

The death of either party to divorce proceedings abates the proceedings and this effect must extend to whatever is identified with those proceedings. *Johns* v. *Johns,* 60 N. Y. Supp. 865; *Kellogg* v. *Stoddard,* 84 N. Y. Supp. 1015; *Millady* v. *Stein,* 44 N. Y. Supp. 408. §763, N. Y. Code Civ. Pro. applies exclusively to cases where the cause of action survives. *Robinson* v. *Govers,* 138 N. Y. 425, 34 N. E. 209. An interlocutory decree does not dissolve the marriage. It is simply a step thereto. BISHOP, MARRIAGE, DIVORCE & SEPARATION. §1516, p. 578. *Noble* v. *Noble,* L. R. 1 P. & D. 691; *Halfen*

v. *Boddington* L. R. 6 P. D. 13; *Wales* v. *Wales,* 119 Mass. 89; *Garnett* v. *Garnett,* 114 Mass. 347, 19 Am. Rep. 369; *Graves* v. *Graves,* 108 Mass. 314. Where the husband dies before the decree nisi is made absolute, the wife is entitled to the rights of a widow. *Chase* v. *Webster,* 168 Mass. 228. Only a decree absolutely sundering the marriage can deprive a wife of her dower right. *Reynolds* v. *Reynolds,* 24 Wend. 193; *Cooper* v. *Whitney,* 3 Hill 95; *Van Cleaf* v. *Burns,* 118 N. Y. 549, 23 N. E. 881, 16 Am. St. Rep. 782. Under this construction of the statutes it becomes possible for a guilty wife to obtain dower after the interlocutory decree is made, provided that the husband dies within the three months set for the making of the absolute decree, and this in spite of the provision in §1774, Code Civ. Pro. that after an interlocutory decree the person against whom such decree is rendered shall have no lien upon the property of the party succeeding in the action.

EVIDENCE—DIFFERENCE BETWEEN BURDEN OF PROOF AND BURDEN OF EVIDENCE.—The plaintiff sued the defendant on an alleged written guaranty of the payment of certain notes, and made out a prima facie case by putting the instrument in evidence. The subscribing witness was then called and testified that when the instrument was executed and delivered, it did not contain the last four words "and will guarantee them" now appearing upon it. There was evidence on both sides of this issue. The plaintiff contends that the lower court's instruction, to the effect that the burden of proof was upon the plaintiff, as to this issue, was error. *Held,* that the instruction was correct. *Foss* v. *McRae et al.* (1909), — Me. —, 73 Atl. 827.

There is much confusion in the cases, as to the meaning of the phrase, "burden of proof." This is due to the fact that many courts give the phrase two entirely different meanings, (1) as indicating a necessity to establish a fact by evidence which preponderates or (2) as indicating a necessity, which rests upon a party, to create a prima facie case in his favor or to overthrow a prima facie case, already created against him. 16 CYC. 926; *Ruth* v. *Krone et al.* (1909), —Cal. App. —, 103 Pac. 960. The courts of a large number of states are getting rid of such confusion, by using this phrase in the first sense only. Such courts give to the phrases, "burden of evidence" and "weight of evidence," the second meaning. "While the burden of evidence may be said to have shifted from the plaintiff to the defendant, when she had made out a prima facie case, and from the defendant to the plaintiff, again, when their evidence had overcome the prima facie case, the burden of proof had not changed at all. * * * A plaintiff, however often the evidence shifts, must upon the whole, persuade the jury, by legal evidence, that his contention is correct. * * * The risk of non-persuasion, is the burden which he must assume." *Foss* v. *McRae,* supra; *Buswell* v. *Fuller,* 89 Me. 600; *Central Bridge Corp.* v. *Butler,* 68 Mass. 130; *Little Pittsburg Con. Min. Co.* v. *Little Chief Min. Co.,* 11 Colo. 223; *Pease* v. *Cole,* 53 Conn. 53.

EVIDENCE—PROOF OF DEATH—PRIVILEGED COMMUNICATIONS BETWEEN HUSBAND AND WIFE.—The plaintiff's husband left his home in Port Huron, Mich., for Seattle, Wash., in March, 1900. The plaintiff received letters